

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHNNIE LEE BROWN,

Plaintiff,

No. C 05-4163 PJH (PR)

v.

ORDER OF DISMISSAL

MAILROOM PROCESSOR # 14; P.
CARRIER; RICHARD KIRKLAND; and
S. ORTIZ,

Defendants.

Plaintiff, an inmate at Corcoran State Prison, has filed a pro se civil rights complaint and an amended complaint. He has been granted leave to proceed in forma pauperis. The amended complaint is now before the court for screening.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a violation of a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting

1 under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

2 *B. Legal Claims*

3 Plaintiff alleges that the defendant mail room employee opened mail addressed to
4 him from the County of San Joaquin Child Protective Services department. He asserts that
5 this was "legal confidential mail exempt from sc[ru]tiny." The other defendants are the
6 officials who denied his grievances about the opening of the letter.

7 Petitioner's main complaint seems to be that the prison violated California
8 regulations regarding what mail can be opened outside the presence of the inmate. That
9 might be actionable in state court, or even in this court if there also were a federal claim on
10 which to ground jurisdiction. However, there is no federal right to be present when mail
11 from public officials or agencies is opened. *Mann v. Adams*, 846 F.2d 589, 590 (9th Cir.
12 1988). Plaintiff thus has failed to state a section 1983 claim, and, because there is no
13 constitutional right not to have such mail opened, an amendment would be futile. The
14 section 1983 claim will be dismissed without leave to amend.

15 The court declines to exercise supplemental jurisdiction over any state law claim that
16 plaintiff may have intended to present. See 28 U.S.C. § 1367(c)(3).

17 **CONCLUSION**

18 The section 1983 claim is **DISMISSED** with prejudice. Any state law claims are
19 **DISMISSED** without prejudice. The clerk shall close the file. Plaintiff's motions (documents
20 numbered seven and eight on the docket) are **DENIED** as moot.

21
22 **IT IS SO ORDERED.**

23
24 Dated: February 27, 2007.



PHYLLIS J. HAMILTON
United States District Judge